

LYNN KEITH

IBLA 81-120

Decided March 17, 1981

Appeal from the decision of the Montana State Office, Bureau of Land Management,
declaring 87 mining claims abandoned and void. M MC 47859.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication -- Evidence: Generally -- Evidence: Presumptions -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

4. Administrative Authority: Generally -- Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Department of the Interior, as an agency of the executive branch of Government, is

without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

5. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on incomplete information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Lynn Keith, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision dated October 14, 1980, the Montana State Office, Bureau of Land Management (BLM), notified Lynn Keith and Art Neils that their 87 lode mining claims, 1/ location notices for which previously had been recorded with BLM, were deemed to be abandoned and void because of the failure of the claimants to file with BLM either affidavits of assessment work performed or notices of intention to hold the claims. As all of the claims had been located prior to October 21, 1976, either such affidavits or notices of intent were required to be submitted to BLM on or before October 22, 1979, as provided by statute and regulation. 43 U.S.C. § 1744 (1976); 43 CFR 3833.2-1(a). On October 28, 1980, BLM issued an amended decision to correct an error in the original so as to show that location notices for each of the claims had

1/ The claims are listed by name, serial number, and date of location in BLM's decision of October 14, 1980, to which reference is here made.

been recorded on October 22, 1979, rather than on the date mentioned in the original decision.

Lynn Keith has appealed 2/ from BLM's finding that the claims must be deemed abandoned and void. Appellant does not deny that no affidavits of the performance of assessment work or notices of intention to hold these claims were filed. Instead, appellant contends that the regulations are arbitrary, capricious, unconstitutional, inequitable, unreasonable, preemptive, and subject to continuously revised interpretations which are applied retroactively. Appellant also argues that the regulations are not being used by BLM for the purpose intended by the statute, but to burden claimants with unnecessary obligations. Moreover, appellant says, BLM failed to adequately inform the public of the new requirements in that the notices distributed by BLM provided incomplete information. As an example, appellant has submitted an information "flyer" or "broadside" which BLM prepared and distributed to explain where, when, and how location certificates must be recorded. This publication makes no reference to the need to file evidence of assessment work or notices of intention to hold claims.

Although appellant's arguments in support of these various contentions are well presented and clearly understood, they do not establish a basis for reversal of BLM's decision.

2/ Art Neils, the other party in interest, did not appeal.

[1] Under section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim, or evidence of the performance of annual assessment work on the claim, in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory, not discretionary, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner, and renders the claim void. James V. Brady, 51 IBLA 361 (1980).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellant also argues that the intention not to abandon these claims was apparent, saying, in essence, that the act of filing the certificates of location for record in BLM and the payment of

recording fees on the last day on which notices of intention to hold, or evidence of assessment work could be submitted, clearly indicated that the claims were not abandoned. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.

[4] Appellant's challenge of the statute and regulations cannot be sustained here. Essentially, the regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979) (appeal pending); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, supra. In any event, it has frequently been held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980); cf. Garland Coal and Mining Co., 52 IBLA 60 (1981). Nor may such a regulation be waived by the Department. Marvin E. Brown, 52 IBLA 44 (1981), and cases

therein cited. With reference to the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Alex Pinkham, 52 IBLA 149 (1981), and cases therein cited. Jurisdiction of such an issue is reserved exclusively to the judicial branch.

[5] Appellant asserts that the failure to file the required documents is attributable to inadequate and incomplete information supplied in BLM publications and orally by BLM personnel. However, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edward W. Kramer, 51 IBLA 294 (1980). Therefore, reliance upon erroneous or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements. Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978). In the absence of a showing of affirmative misconduct by a responsible Federal employee, an estoppel will not lie against the Government because of reliance on erroneous or inadequate information given. United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from, as supplemented, is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Acting Administrative Judge

